

August 18, 2004

Patrick W. McGovern, Esquire  
Genova, Burns & Vernoia  
Eisenhower Plaza II, Suite 2575  
354 Eisenhower Parkway  
Livingston, NJ 07039-1023

Re: Resorts Hotel Inc.  
Case 4-RM-1261

Dear Mr. McGovern:

The above-captioned case petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are unwarranted. The Employer filed the instant petition seeking an election in a voluntarily recognized unit consisting of all musicians employed under the terms of a collective bargaining agreement between the Employer and Atlantic City Musicians' Association, Local No. 661-708, which expires September 30, 2004. In support of the petition, the Employer contends that it no longer employs any musicians directly and instead but uses independent contractors referred by a temporary employment agency whose terms and conditions of employment have been governed by Article XIV, the Independent Contractors provision of its collective bargaining agreement with the Union. It is undisputed that the individuals referred to work by the employment agency are Union members. The Union asserts that the Employer continues to be, at a minimum, the joint employer of the musicians.

I find that further proceedings in this matter are unwarranted. The Board has held that in petitioning for an election to question the continued majority status of a incumbent union, an employer must demonstrate by objective considerations that it has good faith uncertainty as to the union's majority status. *Levitz Furniture Co.*, 333 NLRB 717 (2001). See NLRB Casehandling Manual (Part Two) Representation Proceedings, Sections 11003.1(b) and 11042. In this case, the Employer does not contend that it has good faith uncertainty about the Union's majority status among the musicians in question and has not provided any objective considerations supporting such a contention. Moreover, even assuming that the Employer could establish that it no longer employs any employees in the bargaining unit, there would be no basis to proceed to an election, the result contemplated by an RM petition. Accordingly, I am dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request therefore with the National Labor Relations Board,

addressed to the Executive Secretary, National Labor Relations Board, Washington, DC 20570, either by mail (eight copies) or by electronic filing through the Agency's website. A copy of the request for review must be served on each of the other parties to the proceeding, and with the Regional Director either by mail or by electronic filing to Region4@nlrb.gov.<sup>1</sup> This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, D.C., by the close of business on September 1, 2004. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.

The request for review and any request for extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and the copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph.

Very truly yours,

DOROTHY L. MOORE-DUNCAN  
Regional Director

cc:

Lester A. Heltzer, Executive Secretary, NLRB, Washington, DC 20570  
Christine M. Dougherty, Resorts Hotel Inc., 1133 Boardwalk, Atlantic City, NJ 08401-7329  
Atlantic City Musicians Association Local 661-708, 7117 Ventnor Avenue, Ventnor, NJ 08406  
Peter Marks, Esquire, 222 New Road, Suite 801, Linwood, NJ 08221

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<sup>1</sup> See OM 04-31, dated February 27, 2004, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, and OM 04-43, dated March 30, 2004, for requirements when submitting representation case documents to a Region's electronic mailbox. These memoranda are available on the Agency's Web site at [Hwww.nlrb.govH](http://www.nlrb.gov).